



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

SERVE AUG 23 1999

Issued by the Department of Transportation
on the 19th day of August, 1999

Application of

**DAYSTAR AIRWAYS, LTD.
D/B/A NEVIS EXPRESS**

Docket OST-99-5062 - 3

for a certificate of public convenience and necessity
under 49 U.S.C. 41102 to engage in foreign scheduled
air transportation of persons, property, and mail

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF CERTIFICATE AUTHORITY**

Summary

By this order, we tentatively find that Day star Airways, Ltd. d/b/a Nevis Express is a citizen of the United States and is fit, willing, and able to provide foreign scheduled air transportation of persons, property, and mail using aircraft with no more than nine passenger seats and should be issued a certificate of public convenience and necessity for such operations.

Background

Section 41102 of Title 49 of the United States Code (Transportation) (the "statute") directs us to determine whether applicants for certificate authority to provide foreign scheduled air transportation are fit, willing, and able to perform such transportation, and to comply with the statute and the regulations and requirements of the Department. In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's liberal entry policy with Congress' concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a company's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence operations without posing an undue risk to consumers, and (3) will comply with the Statute and regulations imposed by Federal and State agencies. We must also find that the applicant is a U.S. citizen.

On February 2, 1999, **Daystar** Express, Ltd. d/b/a Nevis Express filed an application in Docket OST-99-5062 for a certificate to provide foreign scheduled **air** transportation pursuant to 49 U.S.C. 41102. **Daystar** accompanied its application with the information required by section 204.3 of our regulations.¹

No answers to Daystar's application have been filed, and no special issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record, and we tentatively conclude that **Daystar** is a U. S . citizen and is fit, willing, and able to operate its proposed scheduled passenger service. However, we will give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

FITNESS

The Company

Daystar, an Alaskan corporation headquartered in Charlestown, Nevis, West Indies, was founded in 1993 by Mr. Allen Haddadi, the carrier's President and sole owner. **Daystar** is registered with the Department as an air taxi operator under Part 298 of our rules (14 CFR Part 298). Under its authority, the carrier has been providing **on**-demand passenger service between points in the United States (including St. Thomas and San Juan) and between the islands of Nevis and St. Kitts, West Indies, using three nine-seat Britton-Norman BN-2 Islander aircraft.

If **Daystar** receives its certificate authority, it plans to provide scheduled passenger service four times each day, seven days per week, between St. Kitts and Nevis, interlining with other U.S. certificated air carriers serving St. Kitts from the United States.

Managerial Competence

Mr. Allen Haddadi is Daystar's founder and sole owner and has served as President since its 1993 inception. Prior to this, Mr. Haddadi, an Airframe and Powerplant Mechanic, was employed in jobs that included aviation mechanic and Director of Maintenance for Seairmotive for two years, Galena Air Service for one year, Harold's Air Service for two years, Baker Aviation for one year, and Bering Air Service for four years.

Mr. Jean Halley, an Airline Transport Pilot with more than **8,000** hours of recorded flight time, was hired in April 1998 as Daystar's Director of Operations and Chief

¹ Information supplementing Daystar's application was filed on March 22, May 12, and July 8, 1999.

Pilot.² Prior to joining **Daystar**, Mr. Halley was employed by Windward Island Airways for eight years serving in positions that included first officer, Captain, Ground and Flight Training Captain and Director of Flight Operations.

Mr. Bret Gladden, an Airframe and Powerplant Mechanic, has been Daystar's Director of Maintenance since October 1993. Prior to his employment with **Daystar**, Mr. Gladden worked as an aviation mechanic for Cape Smythe Air Service for eleven years, for Golden Gate Airlines for one year, and for Sierra Pacific Airlines for one year.

Mr. Timothy Cook has served as Daystar's Financial Controller since July 1998. For more than twenty years, Mr. Cook has been employed as either a financial auditor or accountant at firms that included Deloitte, **Haskins**, and Sells, **Leaseway** Transportation, Ruan Transportation, and Robert Half/Accountemps. For two years, he worked as a data conversion specialist with the U. S . Postal Service.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that **Daystar** has demonstrated that it has the management skills and technical ability to conduct its limited proposed **service**.³

Financial Plan and Operating Proposal

If granted the certificate authority it seeks, **Daystar** plans to continue its on-demand passenger service throughout the Caribbean and to commence interlining its Nevis-St. Kitts operations with that of other U.S. carriers serving St. Kitts from points in the U. S. In doing so, Day star will continue using its three nine-seat BN-2 Islander aircraft.

Daystar furnished a list of its estimated startup expenses that total \$12,350. The carrier has indicated that these costs are not significant because it has the aircraft, personnel, and other resources necessary for the proposed scheduled service. **Daystar** also supplied a financial forecast for its first year of scheduled operations based on its historical operating experience. The applicant anticipates that its total operating expenses for that first year will approximate \$140,000. We have reviewed Daystar's projections and **find** them to be reasonable in light of the very limited scope of the

² The FAA has advised us that it has given **Daystar** a deviation from section 119.69(a) of the Federal Aviation Regulations to allow the carrier to combine the positions of Director of Operations and Chief Pilot.

³ Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals.

proposed operations. Based on our analysis of its forecasts, we conclude that **Daystar** will need access to approximately \$47,000 to meet our financial fitness **criteria**.⁴

Daystar has indicated that it will utilize its own resources to support its scheduled service. To demonstrate its financial posture will sustain its proposed scheduled service, the carrier provided balance sheets as of December 31, 1998, and March 31, 1999, and income statements for the twelve months ended December 31, 1998, and for the three months ended March 31, 1999. It suffered a net loss for the twelve months ended December 31, 1998, due to hurricanes early in the season, but reported net income of \$33,364 for the three months ended March 31, 1999. Its balance sheet as of March 31, 1999, reflected current assets of \$187,454 and current liabilities of \$150,905 giving Daystar a current ratio of 1.24: 1. It also showed long-term debt of \$10,809 and stockholder's equity of \$110,451. **Daystar** also filed a statement from Barclays Bank PLC that indicated that, as of April 7, 1999, Daystar had total funds available of \$86,531.

In light of the foregoing, we tentatively conclude that **Daystar** will have sufficient financial resources available to enable it to institute its proposed scheduled passenger operations without posing an undue risk to consumers or their funds.

Compliance Disposition

Daystar stated that there are no actions or outstanding judgments against it, its owner or key personnel, and that there are no pending investigations, enforcement actions, or formal complaints that have been brought by the Department, including the FAA, involving the carrier or its owner or key personnel with respect to compliance with the Statute or any orders, rules, or requirements issued pursuant to the Statute. **Daystar** also stated that there have been no charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violations brought against it, its owner or its key personnel, and that there have been no accidents or incidents involving **Daystar**, its owner or key personnel in the last year or at any time in the past that remains under investigation.

Our search of the Department's records found no compliance problems with **Daystar**, its owner, or key personnel. In addition, FAA records reflect no accidents or incidents involving **Daystar**.

⁴ In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it resources sufficient to cover any pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of normal certificated operations. Because projected expenses during one or more of the first several months of service frequently do not include all costs of operations that will be incurred during a normal period of operations, it is our practice to base our three-month test on one quarter of the first year's operating cost forecast. In calculating available resources, projected revenues may not be used.

The FAA has advised us that **Daystar** holds a Part 135 Air Carrier Certificate and Operations Specifications and that the carrier has submitted its preapplication statement of intent to amend its current authority to authorize scheduled passenger operations. The FAA also advised that Daystar's operations with respect to safety and compliance have been satisfactory and that the carrier's key personnel are qualified to hold their respective positions.

In light of the above, we tentatively conclude **Daystar** will have the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed.

CITIZENSHIP

Section 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section specifies that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Daystar is a corporation organized under the laws of the State of Alaska. The applicant has provided an affidavit attesting that it is a U.S. citizen and has affirmed that its sole owner, Allen Haddadi, its directors,⁵ and all of its key personnel are U.S. citizens with the exception of Mr. Jean Hally, Daystar's Chief Pilot and Director of Operations, who holds dual citizenship in the Netherlands and France. Furthermore, there is nothing in the record that would lead us to conclude that control of **Daystar** is not with citizens of the United States.

In view of the foregoing, we tentatively conclude that **Daystar** is a citizen of the United States and is fit, willing, and able to provide the scheduled operations it proposes as a certificated air carrier.

PUBLIC CONVENIENCE AND NECESSITY

The award of authority to engage in foreign scheduled air transportation requires a finding under section 41102 of the statute that the grant of this authority is consistent with the public convenience and necessity. We tentatively find that the foreign, scheduled air transportation proposed by **Daystar** is consistent with the public convenience and necessity. In this regard, we find that the authority granted is consistent with the aviation agreement governing air services between the United States

⁵ Daystar's Board of Directors is composed of Mr. Haddadi, Mr. Tim Cook, Daystar's Chief Financial Officer, Ms. Pam Barry, and Ms. **Emilie** Newton.

and St. Kitts and Nevis. In addition, we find that the services proposed will contribute to the price and service operations available to the public?

OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic **analyses**.⁶ We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Daystar's fitness and certification and will issue a certificate that will contain an exact copy of the attached Terms, Conditions, and Limitations.

CERTIFICATE CONDITIONS AND LIMITATIONS

If **Daystar** is found fit and issued the certificate it seeks, its authority will not become effective until **the** company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to its certificate. Among other things, this includes our receipt of evidence that **Daystar** has been certified by the FAA to engage in the subject operations, a fully executed OST Form 6410 evidencing liability insurance coverage that meets the requirements of section 205.5(b) of our rules, and a statement of any changes it may have undergone since its fitness was examined.

Furthermore, we remind **Daystar** of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that certificated air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness.

Moreover, given the limited scope of Daystar's proposed operations, we will impose certain limitations on its authorization to provide scheduled air service as a certificated air carrier. The Department has adopted a policy, consistent with the recommendations

⁵ Pursuant to 49 U.S.C. 41307 the issuance of foreign authority to the applicant is subject to Presidential review.

⁶ If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedures should be specified (see Part 302, Rules **19** and 20); if not, the reasons why not should be explained.

of the FAA 90-Day Safety Review, issued September 16, 1996, of **imposing conditions** in fitness orders to facilitate appropriate monitoring of individual air carriers' growth.' Along these lines, we note that our finding of fitness for **Daystar** is based on the operating plans described in its application, namely, utilizing three nine-seat BN-2 Islander aircraft. Were the applicant to propose to expand its operations to include larger aircraft (i. e., aircraft having 10 passenger seats or more), our fitness findings might no longer apply. Therefore, we propose to limit any authority issued to **Daystar** to operations with aircraft having 9 passenger seats or less. Should **Daystar** subsequently desire to acquire and operate larger aircraft, it must first be determined fit for such operations. Furthermore, should **Daystar** propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.* The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section **41110(e)**.⁹

To aid the Department in its responsibility to monitor the fitness of new carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report, within 45 days following the end of the first year of actual flight operations, to the Air Carrier Fitness Division. The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how its operations have changed during the year, a discussion of any changes it anticipates from its current

⁷ See, e.g., Orders 98-1-3, 97-10-22, 97-11-34, and 97-12-18.

⁸ **Daystar** may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership or management, and to determine what additional information, if any, will be required under section 204.5. In addition, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's **certificate** authority.

⁹ We also remind **Daystar** about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the certificate authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume certificated operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

operations during its second year, current financial **statements**,¹⁰ and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and award a certificate to Day star Airways, Ltd. d/b/a Nevis Express authorizing it to engage in foreign scheduled air transportation of persons, property, and mail, between the United States and Nevis and St. Kitts, West Indies, subject to the attached specimen Terms, Conditions, and Limitations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed **findings, conclusions**, or the **certificate** award set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, DC 20590, in Docket OST-99-5062, and serve them upon all persons in Attachment A no later than 14 calendar days after the service date of this order; answers to objections shall be filed no later than 7 calendar days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.¹¹
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.
5. We will serve a copy of this order on the persons listed in Attachment A.

¹⁰ These financial statements should include a balance sheet as of the end of the company's first full year of actual flight operations and a twelve-month income statement ending that same date.

¹¹ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

6. We will publish a summary of this order in the Federal Register.

By:

A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*



SPECIMEN

Terms, Conditions, and Limitations

**DAYSTAR AIRWAYS, LTD.
D/B/A NEVIS EXPRESS**

is authorized to engage in foreign air transportation of persons, property, and mail:

Between the United States and the islands of Nevis and St. Kitts, West Indies

This authority is subject to the following provisions:

(1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.

(c) A statement of any changes the holder has undergone in its ownership, key personnel; operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A retied list of pre-operating expenses aiiiady paid and those remaining to 6e paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would 6e incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (ie., cash, check or credit card), or issue tickets for the operations proposed under this certificate, and any advertisement by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) *The holder may not operate aircraft designed to have a maximum passenger capacity of more than nine seats. In the event that the holder wishes to institute operations with aircraft having a larger capacity, it must first be determined fit for such operations.*

(4) *The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.*

(5) *The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them to the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-free ~~on~~ intermediate and/or beyond rights) in limited-entry markets unless the holder has been specifically designated to conduct such service, and the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.*

(6) *The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.*

(7) *The holder's authority is effective only to the extent that such operations are also authorized by the FAA.*

(8) *The holder shall at all times remain a 'citizen of the United States' as required by 49 U.S.C. 40102(a)(15).*

(9) *The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.*

(10) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(11) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under all certificates held shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

SERVICE LIST FOR
DAYSTAR LTD
D/B/A NEVIS EXPRESS

Attachment A

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